HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.20019 of 2006

Between:

Shri Mubarak Patan

… Petitioner

And

The Kukatpally Municipality,
Rep. by its Commissioner,
Kukatpally, R.R.District & others

… Respondents

:: ORDER::

Counsel for the Petitioner: Shri Nuthalapati Rajasekharam

Counsel for Respondent No.1: Shri Polisetti Radha Krishna

Counsel for Respondent No.2: Shri D. Prakash Reddy
Senior Advocate assisted by
Shri A. Sudershan Reddy

January 17, 2007

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Per G.S. Singhvi, CJ

In this petition filed in the name of public interest litigation, the petitioners have prayed for issue of a mandamus to respondent Nos.1 to 4 to stop the ongoing construction activity in house-sites bearing Nos.5-5-11, 5-5-12, 5-5-13, 5-5-13/1 and
5-5-13/2 by respondent Nos.5 to 9 and demolish the illegal construction already raised in violation of the sanctioned plan.

The aforementioned prayer of the petitioners is founded on the following assertions:

1) the sites in question are situated in Gramkantam, Kommanigadda, Kukatpally Village and Mandal, Ranga Reddy District and the same are vested in the State Government;
2) that construction of residential or commercial complex are not permitted over Gramkantam land and by raising construction in question, respondent Nos.5 to 9 cannot acquire title;
3) that the construction had been raised in violation of the sanctioned plan and the building rules;
4) that while constructing the building, respondent Nos.5 to 9 have grabbed a portion of the land belonging to Darga Chilla Mahaboob Sahani, and
5) that the disputed construction will adversely affect the residents because respondent Nos.5 to 9 have not adhered to the fire safety norms.

Along with the writ petition, the petitioners have placed on record the following documents:

i) copy of the proceedings dated 31-8-2005 issued by Commissioner, Kukatpally Municipality for release plans in favour of respondent Nos.6 to 9 for construction of residential apartments (stilt + 5 floors);

ii) Memo No.B/510/2005, dated -1-2005 issued by Deputy Collector and Mandal Revenue Officer, Balanagar Mandal, Ranga Reddy District to the effect that as per the report of Additional Mandal Revenue Inspector and Mandal Surveyor, the houses of respondent Nos.6 to 9 (these are the sites in dispute) are in Gramkantham of Kukatpally Village, Balanagar Mandal,

iii) Xerox copy of sanctioned plan, representation dated 22-8-2006 made by one Shri Ch. Sudhakar to Vice-Chairman, HUDA,

iv) Xerox copies of the photographs of ongoing construction and another plan, which is said to have been submitted by respondent Nos.6 to 9.

The stand taken by respondent No.1 is reflected in the affidavit of Smt. K. Sivaparvathi, Commissioner, Kukatpally Municipality. She has averred that title of the sites in question stands in the name of respondent No.8 – Mohd. Habeeb Ali Khan in whose favour gift deed was executed by his father, except H.No.5-5-13/1 measuring 460.40 sq. yds; that HUDA granted technical approval for construction of stilt + 5 upper floors as per Multi-Storied Building Regulations, 1981 and, on that basis, the Municipality permitted for construction of the building; that when action was initiated by the municipal authorities for checking deviations from the sanctioned plan, the builder filed Writ Petition No.767 of 2006, which was disposed of by the High Court on 10-1-2006 by setting aside the final notice with a direction to

the builder to submit explanation to provisional notice dated 15-11-2005 with a further direction to the municipality to consider the same and pass appropriate order, and that instead of filing explanation, the builder filed civil suit (O.S.No.387 of 2006) in the Court of Principal Junior Judge, Ranga Reddy District and succeeded in persuading the Court to grant an order of injunction and then continued the construction activity. In paragraph 5 of her affidavit, Smt. Sivaparvathi has averred that the issue of Chilla Mahaboob Sahani is to be settled by respondent Nos.6 to 8 with the wakf board and the question of unauthorized construction will be taken up after disposal of the civil suit. In para 7, she has averred that action initiated against violations/deviations made by the builder and final action to remove the variations and the unauthorized construction in Chilla Mahaboob Sahani will be taken up after disposal of the civil suit.

In the counter-affidavit filed by him, respondent No.9 – Mohd. Sabeer has questioned the locus standi and bona fides of the petitioners by asserting that they are neither residents of Kommaniguda or Kukatpally Village nor they have any concern whatsoever with the residential area of Kukatpally village, which is now part of Kukatpally Municipal Council. According to respondent No.9, the petitioners have been set up by Shri Madavaram Dasmantha Rao, who was a partner of respondent No.5. This assertion of respondent No.9 is supported by the averments contained in paragraphs 4 and 5 of his affidavit, which are reproduced below:

> "4. It is respectfully submitted that the petitioners are neither residents of Kommanigadda or Kukatpally Village nor they have any concern whatsoever with the residential area falling under Kukatpally Village, which is now part of Kukatpally Municipal Council. The petitioners are strangers and have no

locus to maintain a writ petition. As submitted earlier, the petitioners are set up by the earlier partner of the respondent No.5 who has developed animosity now with the respondent No.5. The fifth respondent's earlier partner by name Sri Madavaram Dashamantha Rao has set up the petitioners. The addresses of the petitioners as mentioned in the writ petition is the residential address of Shri Madavaram Dashamantha Rao and his brother-in-law (Co-Brother). The address of the petitioner No.1 is shown as H.No. 5-3-112/4/2, Kukatpally. The address is the new Municipal Number given to Flat No.101 purchased by the wife of Madavarm Dashamantha Rao, Smt. Sujitha are living there. The petitioner No.1 does not reside there as Madavaram Dashamantha Rao resides there with his family. The address of petitioner No.2 as mentioned in the writ petition is H.No.5-3-112/4/7, Kukatpally. This address is the new Municipal Number of Flat No.201 purchased by Smt. Ramana w/o. Sri R. Rajeswara Rao. Smt. Ramana is the sister of Madavaram Dashamantha Rao's wife i.e. sister of Sujitha. The petitioner No.2 does not reside in the address given by him in the writ petition as it belongs to Smt. Ramana. The respondent No.5 and Madavaram Dashamantha Rao are relatives and were partners. In view of business rivalry which cropped up between them the said Madavaram Dashamantha Rao has got this writ petition filed and also got filed another suit for the same reliefs.

5. The Kukatpally Municipality was a Gram Panchayat till recently and the villagers are known to each other. The business rivals of this respondent have got filed this writ petition by using fictitious names and their own addresses which shows that the public interest is being used to wreak personal vengeance. The same business rivals of this repsondent's have also got filed suit O.S.No.2779/2006 for (i) Mandatory injunction to demolish the structures and (ii) declare the permission granted by HUDA as null and void and for perpetual injunction from raising any structures on the suit schedule property. The nature of prayer and the pleadings are same. The prayers in the suit demonstrate the vengeance with which the suit is filed, wherein a perpetual injunction

restraining this respondent from making any constructions on their lands is sought."

Respondent No.9 has then averred that the property is owned by him and respondent Nos.6 to 8; that the houses constructed over the sties were 50 years old and the same have been demolished for raising a multi-storied residential complex. He has denied the assertion of the petitioners that the site in question is a part of Gramkantham. He has also denied the allegation of the petitioners that while raising construction, respondent Nos.5 to 9 have encroached on the land of Darga named Chilla Mahboob Sahani. He has also denied the allegation that the construction is in violation of the sanctioned plan and averred that the writ petition has been filed with an ulterior motive to blackmail them.

The petitioners have neither filed rejoinder to controvert the statement contained in the affidavit of respondent No.9 nor they have produced any evidence to controvert the allegation that they have been put up by Shri Madavaram Dashamantha Rao and his brother-in-law, who were erstwhile partners of respondent No.5.

We have heard learned counsel for the parties. Shri D. Prakash Reddy, Senior Advocate appearing for respondent Nos.5 to 9 reiterated his clients' objection to the maintainability of the writ petition and argued that the petitioners should be non-suited because this petition is a proxy litigation instituted at the instance of the erstwhile partners of respondent No.5. Shri Reddy pointed out that the petitioners are neither residents of Kommanigadda or Kukatpally Villages nor they have any property in the residential area of Kukatpally Municipality, and argued that the Court should refuse to hear the grievance of the petitioners because they are espousing the cause of

Shri Madavaram Dashamantha Rao. Learned counsel then argued that this Court may not stall the construction being raised by respondent Nos.5 to 9 because the suit filed by them against the threatened demolition of the so-called illegal construction is pending in the Court of Principal Junior Civil Judge, Ranga Reddy District and the said Court has passed an order of injunction.

Shri Nutalapati Rajasekharam, learned counsel for the petitioners submitted that non-filing of rejoinder by the petitioners to controvert the assertion contained in paragraph 4 of the affidavit of respondent No.9 should not be made a ground to non-suit them because the disputed construction is ex-facie illegal and respondent Nos.5 to 9 are completing the construction in the garb of interim order passed by the civil Court. Learned counsel emphasized that the residents of the area will suffer grave injury if the illegal construction made by respondent Nos.5 to 9 is not stopped. He referred to the averments contained in the affidavit of Smt.Sivaparvathi to show that while constructing the building, respondent Nos.5 to 9 have violated the mandatory requirement regarding open spaces etc. and submitted that this Court should stay the ongoing construction.

Shri P. Radhakrishna, learned counsel for respondent No.1 submitted that the municipal authorities have already initiated action to check the deviations and violations of the sanctioned plan, but the same had to be put on hold in view of the order of injunction passed by Principal Junior Civil Judge, Ranga Reddy District.

In our opinion, the petitioners are not entitled to the relief in terms of the prayer made because they have not approached the Court with clean hands. Their refrain to file rejoinder affidavit and deny the allegation made by respondent No.9 that they have been put by the erstwhile partners of respondent No.5 is, in our opinion, sufficient for holding that the writ petition is not a bona fide piece of

litigation and in the name of vindication of public rights, the petitioners have allowed themselves to be used as tools by the erstwhile partners of respondent No.5 to settle their personal scores.

In view of the above conclusion, we would have dismissed the writ petition without delving into the merits of the case set up by the petitioners, but keeping in view the averments contained in the affidavit of Smt.K. Sivaparvathi, Commissioner, Kukatpally Municipality, which clearly show that respondent Nos.5 to 9 have raised constructions in violation of the sanctioned plan and they have continued the construction activity on the strength of injunction granted by Principal Junior Civil Judge, Ranga Reddy District and the fact that in large number of cases, the injunctions granted by the Civil Courts against the demolition of constructions have been misused for raising and completing illegal constructions, we have refrained from adopting that course.

It needs no emphasis that planned development of a city is absolutely imperative for the residents. The illegal and unauthorised constructions made in violation of the Master Plan and the Zonal Development Plan creates enormous problems for the administration and the public at large due to traffic congestion and non-availability of amenities like water, electricity etc. In most of the cities of the country including the cities like Hyderabad, Vijayawada and Warangal, life of the people is becoming miserable on account of mushroom growth of illegal and unauthorised constructions and rampant violation of the Master Plans and Zonal Development Plans. It is, therefore, high-time for the political and executive apparatus of the State including the officers who are entrusted with the task of ensuring planned development of the cities in conformity with the Master Plan and Zonal Development Plans to rigorously enforce the prohibition contained against the misuse of land and ensure that no illegal

construction is allowed to come up. The State machinery must refrain from regularizing illegal and unauthorised constructions. Else, the situation may become chaotic.

At this stage, we may notice some judicial pronouncements which have bearing on the case in hand. In **K. Ramdas Shenoy v. Chief Officers, Town Municipal Council, Udipi**[1], the Supreme Court considered whether the Town Planning Scheme framed under Madras Town Planning Act, 1920 could be violated by the Municipal Council and permission granted for construction of a cinema building in a residential area. While dealing with the objection raised by the builder to the locus standi of the petitioner on the premise that the mere grant of licence to construct a cinema building will not cause any injury to the resident and he cannot seek intervention of the Court till the building is actually used as cinema hall, the Supreme Court observed:

> "The appellant can challenge at the threshold when the Scheme which is framed for the benefit of the residents in that area is violated by the Municipality. The Municipality acts for the public benefit in enforcing the Scheme. Where the Municipality acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess. The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the courts. If sanction is given to build by contravening a bye-law the jurisdiction of the courts will be invoked on the ground that the approval by an authority of building plans

which contravene the bye-laws made by that authority is illegal and inoperative. (Underlining is ours)"

The Supreme Court then considered whether the illegal construction of a cinema building materially affects the right to enjoyment of the property by persons residing in their area and held:

> "An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorised construction. The Scheme is for the benefit of the residents of the locality. The Municipality acts in aid of the Scheme. The rights of the residents in the area are invaded by an illegal construction of a cinema building. It has to be remembered that a scheme in a residential area means planned orderliness in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the Municipality the courts will quash orders passed by Municipalities in such cases."

The Supreme Court also rejected the plea of the respondent that the building construction in violation of the Town Planning Scheme should not be disturbed because the petitioner has spent huge money over it and held:

> "The High Court was not correct in holding that though the impeached resolution sanctioning plan for conversion of building into a cinema was in violation of the Town Planning Scheme yet it could not be disturbed because Respondent 3 is likely to have spent money. An excess of statutory power cannot be validated by acquiescence in or by the operation of an estoppel. The Court declines to interfere for the assistance of persons who seek its aid to relieve them against express statutory provision. Lord Selborne in **Maddison v. Alderson {(1883) 8 AC 467}** said that courts of equity would not permit the statute to be made an instrument of fraud. The impeached resolution of the Municipality has no legal foundation. The

High Court was wrong in not quashing the resolution on the surmise that money might have been spent. Illegality is incurable."

In **Dr. G.N. Khajuria v. Delhi Development Authority**[2], the Supreme Court held that allotment of land reserved for park in a residential colony for nursery school amounted to misuse of power and was liable to be quashed. Their Lordships further held that the mere fact that some construction had already been raised by the allottee was not relevant for determining the legality of the allotment.

In **M.I. Builders Pvt. Ltd. V. Radhey Shyam Sahu**[3], the Supreme Court considered the question whether the construction of underground shopping complex in a park is legally permissible. While declaring that the construction was illegal and upholding the direction of the High Court for demolition thereof, their Lordships of the Supreme Court laid down the following propositions:

1) By allowing underground construction the Mahapalika has deprived itself of its obligatory duties to maintain as is required under Section 114 of the U.P. Municipal Corporation Act, 1959. But then one of the obligatory functions of the Mahapalika under Section 114 is also to construct and maintain parking lots. To that extent some area of the park could be used for the purpose of constructing an underground parking lot. But that can only be done after proper study has been made of the locality, including density of the population living in the area, the floating population and other certain relevant considerations. This study was never done.

2) The Mahapalika is the trustee for the proper management of the park. When the true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by the Supreme Court in **Span Resort case {M.C. Mehta v. Kamal Nath (Span Resort case) – (1997) 1 SCC 388}**. Public trust doctrine is part of Indian law. This public trust doctrine in our country has grown from Article 21 of the

Constitution.

3) Action of the Mahapalika in agreeing to the construction of an underground shopping complex in contravention of the provisions of the Act and then entering into an agreement with the builder against settled norms was wholly illegal and has been held to be so by the High Court. No doubt the Mahapalika is a continuing body and it will be estopped from changing its stand in the given case. But when the Mahapalika finds that its action was contrary to the provisions of law by which it was constituted there could certainly be no impediment in its way to change its stand. There cannot be any estoppel operating against the Mahapalika.

4) No consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles."

Rejecting the plea of the builder that it had made huge investment for construction of underground shopping complex, the Supreme Court observed:

> "In this case the builder got an interim order from this Court and on the strength of that order got sanction of the plan from the Mahapalika and no objection from LDA. It has no doubt invested considerable amount on the construction which is 80% complete and by any standard is a first class construction. Why should the builder take such a risk when the

interim order was specific that the builder will make construction at its own risk and will not claim any equity if the decision in the appeal goes against it? The builder is not an innocent player in this murky deal when it was able to get the resolutions of the Mahapalika in its favour and the impugned agreement executed. Now, construction of shops will bring in more congestion and with that the area will get more polluted. Any commercial activity now in this unauthorised construction will put additional burden on the locality. The primary concern of the Court is to eliminate the negative impact the underground shopping complex will have on the environmental conditions in the area and the congestion that will aggravate on account of increased traffic and people visiting the complex. There is no alternative to this except to dismantle the whole structure and restore the park to its original condition leaving a portion constructed for parking as required under clause (ix-a) of Section 114 of the U.P. Municipal Corporation Act, 1959."

In **Friends Colony Development Committee v. State of Orissa**[4], the Supreme Court emphasised the need of planned development of the cities in the following words:

"In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or

unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified."

The Supreme Court then took cognizance of the large number of illegal constructions made in the city of Cuttack in violation of the Master Plan and sanctioned plan and held:

"Builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffers unbearable burden and is often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the designs of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorised constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers

must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorised constructions, but who failed in doing so either by negligence or by connivance."

In **Mahendra Baburao Mahadik v. Subhash Krishna Kanitkar**[5], a two Judges Bench of the Supreme Court referred to the judgments in **M.I. Builders (P) Ltd. v. Radhey Shyam Sahu** (supra) and **Friends Colony Development Committee v. State of Orissa** (supra) and approved the order of the High Court whereby direction was given to Bhiwandi Nizampura Municipal Council for demolition of illegal construction made by the appellants.

In **Rajender Singh v. State of Haryana**[6], the Supreme Court interpreted the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 and approved the action taken by the concerned authorities for demolition of illegal constructions. In the course of judgment, the Supreme Court observed as under:

"The Act seeks to achieve the object of leaving clear areas adjacent to scheduled roads intended for swift and safe moving of vehicular traffic. Any attempt to defeat that object by putting constructions of *dhabas*, residential or industrial buildings against the terms of the Development Act, would tend to affect public safety and endanger lives and property and courts must discourage such attempts. Lethargy or studied indifference of officials to act promptly cannot be made use of to thwart public interest. It is, therefore, not just or proper for courts to entertain pleas of technical nature which would tend to defeat the object of the Act. The Tribunal and the High Court were fully justified in not interfering with the action initiated by

the authorities concerned for removal of unauthorised constructions in violation of Section 3(1).

Same is the position regarding constructions in controlled areas. The purpose of declaring an area, a controlled area, cannot be allowed to be defeated by recourse to technical pleas, especially by those who have violated the terms of the statute. Viewed from the angle of public interest, when there is notification of the declaration in the gazette in terms of Section 4(1) of the Act, the same must be given effect to and any user of land for purposes other than the original purpose for which it was used, should be discouraged. The said objects should not be lost sight of by courts which are concerned with public interest, which ultimately has to prevail over private interest."

In **M.C. Mehta v. Union of India**[7], the Supreme Court emphasized the need of strict adherence to the Master Plan prepared by the experts after taking into account various aspects like healthy living, environment, lung space need, land use intensity, areas where the residential houses are to be built and where the commercial buildings are to be located, need of household industries, etc. and held that residential houses cannot be converted into commercial shops and residential properties cannot be used for commercial and trading activities.

In **Seema Arshad Zaheer v. Municipal Corporation of Greater Mumbai**[8], the Supreme Court considered the issue of grant of injunction in such matters and held:

1) The discretion of the Court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's

rights or likely infringement of defendant's rights, the balance of convenience tilting in favour of plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.

2) It is true that in cases relating to orders for demolition of buildings, irreparable loss may occur if the structure is demolished even before trial, and an opportunity to establish by evidence that the structure was authorized and not illegal. In such cases, where prima facie case is made out, the balance of convenience automatically tilts in favour of plaintiff and a temporary injunction will be issued to preserve status quo. But where the plaintiffs do not make out a prima facie case for grant of an injunction and the documents produced clearly show that the structures are unauthorized, the court may not grant a temporary injunction merely on the ground of sympathy or hardship. To grant a temporary injunction, where the structure is clearly unauthorized and the final order passed by the Commissioner (of the Corporation) after considering the entire material directing demolition, is not shown to suffer from any infirmity, would be to encourage and perpetuate an illegality. We may refer to the following observations of this Court in **M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu {(1999) 6 SCC 464}** made in a different context:

> "This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way

out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is requires to be exercised has to be in accordance with law and set legal principles.

3) Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere. Exercise of discretion by granting a temporary injunction when there is 'no material', or refusing to grant a temporary injunction by ignoring the relevant documents produced, are instances of action which are termed as arbitrary, capricious or perverse. When we refer to acting on 'no material' (similar to 'no evidence'), we refer not only to cases where there is total dearth of material, but also to cases where there is no relevant material or where the material, taken as a whole, is not reasonably capable of supporting the exercise of discretion. In this case, there was 'no material' to make out a prima facie case and therefore, the High Court in its appellate jurisdiction, was justified in interfering in the matter and vacating the temporary injunction granted by the trial court."

We have made a mention of the above noted judgments because we find that the concept of planned development has taken a back seat in almost all big cities of the State of Andhra Pradesh. In a large number of cases filed at the instance of persons involved in land grabbing or raising construction without getting the building plan sanctioned or in violation of the sanctioned plan, the civil Courts grant injunctions or passes order of status quo as a matter of course. Some of the judicial officers in the State seem to be totally unmindful of the incalculable injury caused to the public interest by grant of injunctions

which protect land grabbers, encroachers and those engaged in illegal constructions. It is high-time that the officers start applying the breaks and refrain from passing an order of injunction which may facilitate continuance of illegal construction. The members of the subordinate judiciary are expected to enlighten themselves by going through the judgment of the Supreme Court in **Seema Arshad Zaheer v. Municipal Corporation of Greater Mumbai** (supra).

On the basis of the above discussion, the writ petition is disposed of in the following terms:

1) It is declared that the petitioners have been put up by the erstwhile partner of respondent No.5 and the petition filed by them in the name of public interest litigation cannot be entertained.

2) Respondent No.5 is restrained from making further construction till the adjudication of the suit filed by him and other private respondents.

3) In future, no Civil Court shall pass an order of injunction or status quo which may directly or indirectly facilitate further construction by the plaintiff. If at all, the Court feels convinced that an order of injunction should be granted against threatened demolition of the property, then it shall invariably pass an order of status quo with the rider that neither parties shall change the physical structure of the property in dispute.

Registrar (Judicial) is directed to send a copy of this order to all the District Judges in the State. The latter shall circulate the order among the judicial officers of their respective districts.

G.S. SINGHVI, CJ

January 17, 2007

C.V. NAGARJUNA REDDY, J

svs

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[1] (1974) 2 SCC 506

[2] (1995) 5 SCC 762

[3] (1999) 6 SCC 464

[4] (2004) 8 SCC 733

[5] (2005) 4 SCC 99

[6] (2005) 9 SCC 1

[7] (2006) 3 SCC 399

[8] JT 2006 (11) SC 1 = (2006) 5 SCC 282